

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 20, 2004

**To:** The Commission  
(Meeting of April 22, 2004)

**From:** Alan LoFaso, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** AB 2803 (Horton): Public Utilities Commission: Office of Economic Development.  
As Amended April 14, 2004

**Legislative Subcommittee Recommendation:** Support, if amended.

**Summary:** This bill would require the Commission to consider economic impact analysis in specified proceedings.

**Digest:** Existing law, Cal. Const. art. XII, sec. 2, empowers the Commission to establish its own procedures, subject to statute and due process.

Existing law, P.U. Code sec. 321.1, states legislative intent that the Commission assess the economic effects or consequences of its decisions as part of each ratemaking, rulemaking, or other proceeding, using existing resources and within existing Commission structures. Existing law further prohibits the Commission from establishing a separate office or department to evaluate the economic development consequences of its activities.

This bill would require the Commission to designate in scooping memos the need to perform and economic analysis in specified proceedings.

This bill would prohibit any additional costs arising from its provisions from being borne by ratepayers or the general fund.

**Analysis:** Collectively, the Commission regulates public utilities with annual revenues of over \$40 billion/year. These utilities undertake annual capital investments of several billion dollars annually. Through its oversight and regulatory functions, the Commission has significant influence over how these investments are made. In some cases, this is done through direct regulation (i.e the Commission directing a utility to make necessary

investments). In other industries that have been opened up to greater competition, the Commission has established a regulatory regime that serves as a platform for private investment (i.e. opening the local telephone market to competition).

The effect of Commission regulation in promoting economic development is substantial. Critical to the success of any business is the provision of adequate infrastructure such as reliable electric, gas, and water service as well as access to a telecommunications infrastructure capable of supporting today's high-technology requirements. For many manufacturing industries, efficient railroad transportation is equally important.

The siting, provision, and location of public utility services is also a key component in community economic development. The Commission's oversight of railroad grade crossings also can affect and promote community development by alleviating traffic and safety concerns.

Equally important, the cost of public utility services is an input factor in economic decisions of businesses to expand/relocate within California. Given the higher energy rates imposed upon California to deal with the after-effects of restructuring, California's electric rates are not competitive with those of most other states. Ensuring that rates are reasonable for the other industries the Commission regulates is also important.

Despite the significant effect that Commission regulation has on economic development within California, there is currently no single entity responsible for coordinating these activities and ensuring that economic development concerns are being fully considered in formal matters before the Commission.

This bill originally would have established such an entity responsible for reviewing, understanding, and coordinating economic development implications of Commission actions. However, the Assembly Utilities and Commerce (U&C) Committee rejected the concept of an office, while supporting the goal of economic impact analysis. The committee then moved to amend the bill to require economic impact analyses to be conducted as part of quasi-legislative and rate-setting proceedings. Discussion in the U&C Committee contemplated further refinements to focus on major proceedings calling for economic impact analysis.

Although the Legislative Subcommittee expressed clear preference for an Office of Economic Development, it opted to support the measure if amended to address a number of technical concerns and address the impact on staff and the agency to fulfill the intent of the bill.

Attach in this memo is language developed by ALJ and Strategic Planning divisions. These amendments:

- Clarify technical language to be consistent with Commission practice;
- Eliminate language prohibiting cost recovery for the provisions of the bill.

- Limit applicability to proceedings with one or more utilities with gross annual California revenues of \$500,000,000 as parties;
- Clarify that economic analysis is to be provided by parties, subject to evaluation and consideration by the Commission, as specified.

### **Suggested Amendments:**

1701.7. (a) If the commission determines that a ratesetting or quasi-legislative case requires a hearing pursuant to Section 1701.1, ***and where any of the utilities that are parties to the proceeding has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the*** assigned commissioner or the assigned administrative law judge shall designate in the scoping memorandum the need to ~~perform an~~ ***develop a record on the economic impact analysis of the issues presented in the proceeding.*** If a determination is made that a ***record on the*** an economic impact analysis is required, the ***appropriate*** findings ***regarding the economic impact*** shall be included as a part of the final written decision.

~~(b) Any additional cost to the commission resulting from the implementation of subdivision (a) shall not be borne by ratepayers or the General Fund.~~

***(b) If so determined, and for purposes of implementing this section, each utility to the proceeding must provide a showing regarding economic impact analysis, which is defined as follows:***

***(1) demonstration of short-term and long-term economic costs and benefits to ratepayers;***

***(2) impact on competition;***

***(3) demonstration of how the proposed action maintains or improves the financial condition of the utility;***

***(4) demonstration of the impact of the proposed action on state and local economies, on an overall basis.***

***(c) Parties, including but not limited to public utilities, shall have the burden of demonstrating by a preponderance of the evidence that the economic impact analysis is beneficial to ratepayers and the state and local economies on an overall basis. The commission shall consider each of the criteria listed in subdivision (b) paragraphs (1) to (4), inclusive, and find, on balance that the proposed transaction is in the public interest in terms of economic impact.***

***(d) The Legislature finds and declares that, to the extent that an economic impact analysis is required, such analysis may require resolution of the proceeding later than 18 months from the scoping memo issuance, consistent with section 1701.5(b). It is the intent of the Legislature that the analysis required by this Section, shall be required for proceedings initiated on or after the effective date of this statute.***

### **LEGISLATIVE HISTORY**

Asm. U&C: 10-0 (do pass) (4/12/04)  
To be heard in Asm. Jobs, E.D.&E. on April 20.

### **FISCAL IMPACT**

AB 2803 would impose costs of \$548,000 for 7.0 positions, including on Administrative Law Judge, to conduct hearings.

### **SUPPORT/OPPOSITION**

Support: California Chamber of Commerce (sponsor); California Independent Grocers & Convenience Stores (CIGCS); California Manufacturers & Technology Association (CMTA); Pacific Gas & Electric (PG&E); SBC; Sempra; Verizon.

Opposition: TURN.

### **LEGISLATIVE STAFF CONTACT**

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**Date:** April 19, 2004

**BILL LANGUAGE:**

BILL NUMBER: AB 2803    AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    APRIL 14, 2004  
AMENDED IN ASSEMBLY    MARCH 26, 2004

INTRODUCED BY    Assembly Member Jerome Horton

FEBRUARY 20, 2004

~~An act to amend Section 321.1 of, and to add Section 309.4 to, the Public Utilities Code, relating to the Public Utilities Commission.—~~ An act to add Section 1701.7 to the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2803, as amended, Jerome Horton. Public Utilities Commission:  
~~Office of Economic Development—~~ hearings

*Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law requires the commission to determine whether a proceeding requires a quasi-legislative, an adjudication, or a ratesetting hearing.*

*This bill would require that when the commission determines that a ratesetting or quasi-legislative case requires a hearing, the assigned commissioner or administrative law judge designate in the scoping memorandum the need to perform an economic impact analysis; and if an economic impact analysis is needed, to include the findings of the analysis as a part of the final written decision.*

~~— Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law establishes a division within the Public Utilities Commission, known as the Office of Ratepayer Advocates, to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law states the intent of the Legislature that the commission assess the economic effects or consequences of its decisions within existing resources and commission structures, and prohibits the commission from establishing a separate office or department for the purpose of evaluating economic development consequences of commission activities.~~

~~— This bill would delete the prohibition upon the commission establishing a separate office or department for the purpose of evaluating economic development consequences of commission activities and would establish the Office of Economic Development as a division within the commission to review and assess the beneficial and adverse economic impacts, as defined, intended and unintended, of commission decisions and orders in commission proceedings. The goal of the office would be to assist the commission in making decisions~~

~~that will promote economic development and to avoid making decisions that will suppress economic development.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 309.4 is added to the Public Utilities~~

SECTION 1. Section 1701.7 is added to the Public Utilities Code, to read:

1701.7. (a) If the commission determines that a ratemaking or quasi-legislative case requires a hearing pursuant to Section 1701.1, the assigned commissioner or the assigned administrative law judge shall designate in the scoping memorandum the need to perform an economic impact analysis. If a determination is made that an economic impact analysis is required, the findings of the analysis shall be included as a part of the final written decision.

(b) Any additional cost to the commission resulting from the implementation of subdivision (a) shall not be borne by ratepayers or the General Fund. ~~Code, to read:~~

~~309.4. (a) There shall be established within the commission, a division named the Office of Economic Development, which shall review and assess the beneficial and adverse economic impacts, intended and unintended, of commission decisions and orders in commission proceedings. The goal of the Office of Economic Development is to assist the commission in making decisions that will promote economic development and to avoid making decisions that will suppress economic development.~~

~~(b) For purposes of this section:~~

~~(1) "Adverse economic impacts" includes increasing costs, raising prices, loss of jobs or employment opportunities, reducing technological innovation or investment in technological innovation, reducing investment in infrastructure to serve consumers, and reducing consumer choices and options.~~

~~(2) "Beneficial economic impacts" include increased efficiency, reduced costs, reduced prices, technological innovation, increased employment, increased consumer choices, and increased information reasonably available to consumers to make informed choices.~~

~~SEC. 2. Section 321.1 of the Public Utilities Code is amended to read:~~

~~321.1. It is the intent of the Legislature that the commission assess the economic effects or consequences of its decisions as part of each ratemaking, rulemaking, or other proceeding, and that this be accomplished using existing resources and within existing commission structures.~~